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By: Helene Gabel Date: May 23, 2003 5/30/03

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In Re Patent Application of: :
Reiner Class *et al.* :
Conf. No.: 7581 : Group Art Unit: 1645
Appln. No.: 10/049,753 : Examiner: Rodney P. Swartz, Ph.D.
Filing Date: October 10, 2002 : Attorney Docket No.: 10573-1U1
Title: ANTIMICROBIAL HISTONE H1 COMPOSITIONS, KITS, AND METHODS OF USE THEREOF

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated April 25, 2003 (Paper No. 7), concerning the above-identified patent application. The Office Action is a restriction requirement among what the Examiner characterized as eight groups of inventions that, according to the Examiner, do not relate to a single general inventive concept under PCT Rule 13.1 because, according to the Examiner, under PCT Rule 13.2, they lack the same or corresponding special technical features. The Examiner also indicated that under PCT Rule 13, in addition to an independent claim for a given product (Group I), an Applicant is entitled to an independent claim for a use of the product. The Examiner determined that an independent claim for use is any one of Group II through Group VIII.

Initially, Applicants traverse the restriction requirement on the grounds that all of the claims of Groups II through VIII, namely, claims 59 through 84, depend directly or indirectly from independent claim 1, and relate to various uses of a eukaryotic histone H1 protein. Thus, the separate groups relate to a single general inventive concept under PCT Rule 13.1, since the use of the eukaryotic histone H1 protein is the same or corresponding special technical feature

under PCT Rule 13.2. Accordingly, withdrawal of the restriction requirements is respectfully solicited.

In the event that the restriction requirements are not withdrawn, Applicants provisionally elect for prosecution in this application the claims of Group I, namely, claims 38-58. In addition, under PCT Rule 13, as noted by the Examiner at the first full paragraph of page 3 of the Office Action, Applicants provisionally elect for prosecution in this application, the claims of Group V, namely, claims 76-80, directed to a method of coating a medical device with the composition of claim 38.

These elections are without prejudice to the filing of the non-elected claims in one or more divisional or other related application.

Reconsideration and withdrawal of the restriction requirements and an early examination and Notice of Allowance are respectfully solicited.

Respectfully submitted,

REINER CLASS *et al.*

May 23, 2003
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